

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SAMUEL S. UPTHEGROVE,

Plaintiff,

v.

CHARLES TUBBS, PAUL WESTERHAUS,
JOHN R. OURADA, BRUCE SUNDE,
THOMAS BRANDT, WAYNE KRAFT,
BRUCE GERDES, GREG WIED and
DAVE GRYSKIEWICZ,

Defendants.

ORDER

08-cv-661-bbc

After defendants moved for summary judgment on plaintiff Samuel S. Upthegrove's failure to train claim against defendants Tubbs, Westerhaus, Ourada and Sunde, plaintiff moved to voluntarily dismiss that claim. In an order entered June 26, 2009, I told plaintiff that I would grant the motion only if he agreed that dismissal of that claims would be with prejudice. He has responded, agreeing to dismissal with prejudice. Dkt. #36. In addition, defendants have stated that dismissal may be without costs. Dkt. #35. Therefore, I will grant plaintiff's motion to voluntarily dismiss his failure to train claim against defendants Tubbs, Westerhaus, Ouranda and Sunde and deny as moot defendants' motion for summary

judgment. I note that the remaining defendants did not move for summary judgment, acknowledging that the parties disagree about material facts related to plaintiff's excessive force claim against these defendants. Dkt. #23, at 2.

ORDER

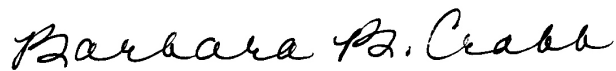
IT IS ORDERED that:

1. Plaintiff's motion to voluntarily dismiss his failure to train claim against defendants Charles Tubbs, Paul Westerhaus, John R. Ourada and Bruce Sunde, dkt. #30, pursuant to Fed. R. Civ. P. 41, is GRANTED. Plaintiff's complaint is DISMISSED with prejudice and without costs as to defendants Tubbs, Westerhaus, Ourada and Sunde.

2. The motion for summary judgment filed by defendants Tubbs, Westerhaus, Ourada and Sunde, dkt. #22, is DENIED as moot.

Entered this 2nd day of July, 2009.

BY THE COURT:

A handwritten signature in cursive script, reading "Barbara B. Crabb".

BARBARA B. CRABB
District Judge